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URBANLIP.COM LTD.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

URBANLIP.COM LTD.

Plaintiff,

v.

LEREVE SKIN INSTITUTE INC., a
California Corporation; HELEN YU, an
individual; and DOES 1 through 10
inclusive,

Defendant.

Case No. 8:18-cv-01685-DOC-JDE

**JOINT REPORT OF EARLY
MEETING**

[FRCP RULE 26(b); CD-LR 26-1]

Complaint Filed: Sept. 18, 2018

Pursuant to Federal Rule of Civil Procedure 26(f), Central District Local Rule 26-1, and this Court's Standing Order the parties to this action, Plaintiff urbanlip.com Ltd., and Defendants LeReve Skin Institute and Helen Yu hereby submit this Joint Report of Early Meeting.

I. STATEMENT OF FACTS

a. Plaintiff's Statement of the Case

This is a straight forward case of copyright infringement by Defendants Helen Yu and LeReve Skin Institute Inc. Plaintiff urbanlip.com ltd. ("Urbanlip") is

1 a stock photography agency based in the U.K. specializing in health, beauty, and
2 fashion imaging. Urbanlip is the rights holder to four unique beauty photographs
3 (“Images”), which is registered with the United States Copyright Office.

4 In 2012, Urbanlip was contacted by Defendant Yu in her capacity as CEO of a
5 an entity named Merveille Beauty, which is not part of this lawsuit. Defendant Yu
6 sent a request to Urbanlip for licensing information for some of its photographs.
7 Urbanlip and Defendant Yu did not enter into a licensing agreement, but shortly
8 thereafter Urbanlip discovered that six of its photographs were being used to
9 promote various Merveille Beauty products. After Urbanlip confronted Defendant
10 Yu about the infringement, Defendant Yu agreed to pay a retroactive license fee,
11 but the transaction was never consummated.

12 In June 2018, Urbanlip discovered that the Images were being used by
13 Defendant LeReve to promote a series of skin care products branded as “ReveSkin”
14 and “RevePeel.” Urbanlip noticed that the Images were being used online in various
15 advertisements (“Infringing Advertisements”), and also noticed that the Images were
16 being used on the ReveSkin and RevePeel product boxes, on print advertising
17 brochures, on physical print displays, and other print media (“Infringing
18 Materials”). After a brief investigation, Urbanlip discovered that Defendant Yu was
19 the president of Defendant LeReve.

20 Urbanlip estimates that the a licensing fee to use the Images in print media
21 and online advertisements similar to the Infringing Advertisements and Infringing
22 Materials would cost approximately \$5,000 per year per Image to license.

b. Defendant's Statement of the Case

1
2 I, Helen Yu was the CEO of Merveille Beauty & Health Inc. in 2012, which
3 is not the part of lawsuit. And I am the defendant of this lawsuit as the owner &
4 president of LeReve Skin Institute Inc.
5

6 In May 2012, I contacted Urbanlip on behalf of Merveille Beauty & Health
7 to inquire one picture the company's marketing team planed to use. In Aug 2012.
8 Merveille Beauty and Health purchased the that Urbanlip's image through
9 Masterfile, the sales agent of Urbanlip. The price of image was \$1,100. The
10 evidence of purchase receipt was submitted in the answer to the court and served
11 the Plaintiff on Oct 15. 2018. So there was no copyright infringement, willfully or
12
13
14 unwilfully in 2012 from me.

15 In July 2018, LeReve Skin Institute Inc received letter from Higbee &
16 Associates on behalf on Urbanlip to ask for "copyright infringement fee" for
17 several pictures the company used on briefly on social media in 2017 and one or
18 two pictures used on the brochure of 2 products of total 18 products LeReve has.
19 Once received the letter, I personally immediately investigated internally. The
20 design/staff team completely changed from 2012 and it has been five years. It was
21 not to my knowledge that the license fee of these images were not cleared. These
22 pictures were stored in our company's computer from previous team. There are not
23 any watermark and copyright claims printed on these pictures, the team of LeReve
24 Skin Institute Inc including myself assumed the copyright were cleared. Both
25
26
27
28 LeReve Skin Institute and I have never set up the account nor downloaded any

1 pictures from Urbanlip's website from 2014 till today. Upon receiving the letter,
2 we immediately took down the pictures from social media, destroyed the printing
3 brochures with these images on and replaced with new images. We also informed
4 our clients (no more than 20 clients) to take down the related images on their
5 websites and throw away printed brochures if any left over.
6

7 We replied Higbee & Associate via letter and email to offer reasonable
8 license fee instead of "copyright infringement fee". Per purchase record in 2012
9 and published license fee from Urbanlip's sales agent Masterfile, the license fee
10 varies from \$250 to \$1100 per image depending on the picture usage. There are no
11 copy infringements from me and LeReve Skin Institute Inc to cause any damage.
12

13 In additional, LeReve Skin Institute is a medical company, not a cosmetic
14 company. These stock pictures were used just for image and decoration purpose,
15 having nothing to do with product benefit, sales and or profit if any. We never
16 claimed any of these pictures are related to our product function. These stock
17 pictures are generic and can be easily replaced, which we did. We had no reason to
18 infringe these photos purposely.
19

20 We have showed our sincere cooperation since we received the first
21 communication from the Plaintiff in July 2018. As the company operated in
22 medical industry, where the patent and copyrights are strictly protected as business
23 common practice. we respect intellectual property and copyright law. We run the
24 business with integrity and have been very carefully. We are willing to pay license
25 fee of the images we used with reasonable price.
26
27
28

II. PRINCIPAL ISSUES OF THE CASE

a. Plaintiff's Statement

Plaintiff believes that the principal issues to be decided in the case will be the extent of the infringement Images and the calculation of damages and profits resulting from the infringement alleged.

b. Defendant's Statement

Defendant believes that the principle issues to be decided in the case will be if there were copyright infringements and if any damage and profits should be claimed from plaintiff and what is the reasonable licensee fee of these images.

III. ADDITIONAL PARTIES

The parties do not anticipate any additional parties being added to the case.

IV. CONTEMPLATED MOTION PRACTICE

a. Plaintiff's Contemplated Motions

Plaintiff current has a Motion to Strike pending against Defendant LeReve and noticed for hearing on December 17, 2018. If that Motion is granted, Plaintiff anticipates bringing a Motion for Default Judgment against LeReve. Plaintiff also anticipates that it will bring a Motion for Summary Judgment against any remaining Defendants.

b. Defendant's Contemplated Motions

The pending Motion to Strike filed by Plaintiff is because that I, Helen Yu, cannot defend LeReve Skin Institute Inc as a California Corporation. However, it is a straight forward case. The main defendant is me, not the company LeReve Skin

1 Institute Inc. These pictures were obtained during the 2012 under Merveille Beauty
 2 & Health and have nothing to do with LeReve Skin Institute Inc. I believe that I
 3 can defend the case. Meanwhile. We are actively working on settlement and
 4 license fee negotiation with Plaintiff via email and phone calls. In addition, our
 5 company has limited resource to hire attorney to defend the case. Here we ask for
 6 the court to postpone Dec 17 2018 hearing and give our both parties more time to
 7 reach the settlement before grant the Motion.
 8

9 **V. SETTLEMENT DISCUSSIONS**

11 The parties have been engaged in settlement discussions primarily by email
 12 and telephone and both parties desire to settle the case. Both sides have made
 13 settlement proposals, and the parties have voluntarily exchanged information to aid
 14 in the settlement discussions.
 15

16 Pursuant to L.R. 16-15.4, the parties would request ADR Procedure No. 2 -
 17 The parties shall appear before a neutral selected from the Court's Mediation Panel.
 18

19 **VI. RULE 26(f) DISCOVERY PLAN**

20 In accordance with the requirements of Federal Rule of Civil Procedure
 21 26(f)(1)-(4), the parties submit the following:
 22

23 **A. Proposed Changes to Rules 26(a)(1) Disclosures**

24 The Parties agree that no changes should be made to the form or requirement
 25 for disclosures under Rule 26(a)(1).
 26

27 **B. Discovery**

28 The parties propose the following with regard to discovery:

1. Scope and Subjects of Discovery

a. Plaintiff's Subjects on Which Discovery May Be Needed.

Without prejudice to its rights to seek discovery on any relevant issues, Plaintiff contemplates that it will need and seek discovery concerning the scope and extent of the infringement, Defendants' prior dealings with Plaintiff, and the number of products sold bearing the infringing photographs

b. Defendants' Subjects on Which Discovery will be Needed.

Without prejudice to their rights to seek discovery on any relevant issues, Defendants contemplate that they will need and seek discovery concerning: what are the published common license fee of the stock images from Urbanlip to a small size company.

c. Agreed Upon Methods of Discovery.

The parties agree that the anticipated methods of future discovery will include: (1) written discovery in the form of Interrogatories, Requests for Admissions, and Requests for Production of Documents; (2) written discovery via issuance of subpoenas to third parties; and (3) oral depositions of "person(s) most knowledgeable" under Rule 30(b)(6), and other relevant witnesses.

2. Discovery Completion Dates

- a. Supplementations – Supplementations under Fed. R. Civ. Proc. 26(e) are due in a reasonable time after material, relevant facts are learned, or by court order.
- b. Discovery Cut-Off – All fact discovery shall be completed by all parties on or before Jan 15, 2019.

3. Protocol for Electronically-Stored Information

Disclosure or discovery of electronically stored information should be handled as follows:

- a. All electronic files are to be produced in their native format as kept in the ordinary course of business, along with any program used to open those files. Metadata shall not be removed from any file prior to production.
- b. If any electronic file cannot reasonably be produced in its native format, all documents within that file are to be produced electronically in optical character recognized (also known as “OCR”-ed) portable document format (PDF), accompanied by a declaration from counsel explaining the reason the electronic file could not be produced in its native format.

4. Procedures for Resolving Disputes Regarding Claims of Privilege

1 The parties agree to use the procedures set forth in Fed. R. Civ.
2 Proc. Rule 26(b)(5) regarding any claims of privilege or protecting
3 materials asserted as being for trial-preparation. The parties request
4 that this proposed procedure be adopted within the court's further
5 orders.
6

7 **5. Changes in Discovery Limitations**

8 The parties do not request any changes in the discovery limitations
9 set forth in the FRCP.
10

11 **VII. THE MATTER IS NOT COMPLEX**

12 The parties agree that the matter is not complex such that any portion of
13 Manual for Complex Litigation should be utilized in managing the matter.
14

15 **VIII. PROPOSED MOTION AND TRIAL SCHEDULE**

- 16 A. Plaintiff proposes propose that the fact discovery cut-off date be May
17 17, 2019. Defendant proposes that the fact discovery cut-off date be Jan
18 15, 2019.
19
- 20 B. Plaintiff proposes propose that the cut off for hearing dispositive pre-
21 trial motions shall be July 8, 2019. Defendant proposes that the cut off
22 for hearing dispositive pre-trial motions shall be Feb 15, 2019.
23
- 24 C. Plaintiff proposes that the time for a final pre-trial conference date shall
25 be August 19, 2019. Defendant proposed that the time for a final pre-
26 trial conference date shall be Mar 15, 2019.
27
- 28 D. Plaintiff proposes that the time for trial shall be September 10, 2019, or

as soon thereafter as the Court deems appropriate. Defendant proposes that the time for trial shall be March 30, 2019, or as soon thereafter as the Court deems appropriate.

IX. SETTLEMENT AND ADR

Settlement is likely. The parties have exchanged settlement offers. Should these early efforts be unsuccessful, the parties do not intend to pursue private mediation.

X. TRIAL TIME ESTIMATE

Trial is currently expected to last between 3 and 5 days.

XI. PROPOSED EXPERT DISCOVERY SCHEDULE

Deadlines for disclosure of the identities of expert witnesses that each party may use at trial to present evidence, and any written report from an expert witness required under Fed. R. Civ. Proc. 26(a)(2)(B) will be filed by June 1, 2019. Rebuttal expert reports will be filed by July 15, 2019.

Date: December 3, 2018

HIGBEE & ASSOCIATES

By: /s/ Ryan E. Carreon

Ryan E. Carreon, Esq.

Attorney for Plaintiff

Date: December 3, 2018

By: /s/ Helen Yu

Helen Yu

Defendant In Pro Per

PROOF OF SERVICE

I, the undersigned, say:

I am a citizen of the United States and I am a member of the Bar of this Court. I am over the age of 18 and not a party to the within action My business address is 1504 Brookhollow Dr., Ste 112, Santa Ana, California, 92705.

On December 3, 2018, I caused to be served the foregoing documents:

JOINT REPORT OF EARLY MEETING

X (BY MAIL) I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid and addressed to the person below:

Helen Yu
18 Technology Drive, Suite 138
Irvine, CA 92618

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on December 3, 2018, at Santa Ana, California.

/s/ Ryan E. Carreon
Ryan E. Carreon, Esq.
Counsel for Plaintiff